The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL J. SORENSEN
and ROBERT LEE POPP

Appeal No. 2006-1892
Application 09/849,594

ON BRIEF

Before GARRIS, WARREN and TIMM, *Administrative Patent Judges.*

WARREN, *Administrative Patent Judge.*

REMAND TO THE EXAMINER

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 CFR §41.50(a)(1) (2005); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 3, August 2005).

The official electronic records of the USPTO contain the following documents for this application:

Examiner's answer mailed April 21, 2005;

Reply brief filed June 10, 2005;

Supplemental examiner's answer mailed June 20, 2005, differing solely from the answer by the addition of the initials of the second conferee on the signature page;

Supplemental reply brief filed August 18, 2005, presenting additional arguments augmenting arguments in the reply brief; and

Examiner's communication mailed November 10, 2005, stating that "[t]he [supplemental] reply brief filed 8/18/05 has been entered and considered . . . [and] forwarded to the Board."

Examiner's communication mailed April 13, 2006, stating that "[t]he [supplemental] reply brief filed 6/10/05 has been entered and considered . . . [and] forwarded to the Board."

The following rules apply to the filing of a reply brief, the examiner's response to a reply brief and a supplemental reply brief.

37 CFR §41.41 (September 2004)

> (a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

37 CFR §41.43 (September 2004)

> (a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.
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> . . . .
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> (b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

Upon the entry of the supplemental reply brief filed August 18, 2005, the record has two reply briefs in response to the answer mailed April 21, 2005, which have been entered and considered by the examiner.

In our prior remand entered on March 22, 2006, in Appeal No. 2006-0477 in this application, we pointed out that the supplemental answer mailed June 20, 2005, contained *no* language "responding to any new issue raised in the reply brief" filed June 10, 2005, required to constitute a supplemental examiner's answer within the meaning of 37 CFR §41.43(a)(1). Therefore, there was no "supplemental examiner's answer" which required or permitted the filing of a supplemental reply brief under 37 CFR §41.43(b) and MPEP § 1208 (8th ed., Rev. 3, August 2005).

Thus, we find no basis in the record before us or in the rules of practice before the Board which provides for entry of the supplemental reply brief filed August 18, 2005.

Accordingly, the examiner is required to take appropriate action consistent with current examining practice and procedure to clarify the record with respect to the status of the

supplemental reply brief filed August 18, 2005, to either identify a basis for the entry of the supplemental reply brief in the record and/or under the rules of practice, or hold the supplemental reply brief improperly filed under the rules of practice, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.

This remand is *not* made for the purpose of directing the examiner to further consider the grounds of rejection.

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

This application, by virtue of its "special" status, requires immediate action. It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal in this case. *See* MPEP § 708.01(D) (8th ed., Rev. 3, August 2005).

Remanded

BRADLEY R. GARRIS)
Administrative Patent Judge)
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CHARLES F. WARREN) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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CATHERINE TIMM)
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